IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 31972 of 2007(F)

PETITIONER:

**DAISY JOSEPH, W/O. P.M.JOSEPH,
AGED 47 YEARS, EEYANTHALAM PANACHIKKAL HOUSE,
SANKARAMPADY P.O., PIN-671541, KARIVEDAKAM,
KASARGODE, NOW RESIDING AT FLAT NO.601,
REGEANT PARK, BEHIND ROSHNI NILAYA, VALENCIA,
MANGALORE-575002.**

**BY ADV. SRI.R.PADMARAJ
SRI.N.P.SETHU**

RESPONDENTS:

1. **M/S. SOUTH INDIAN BANK LIMITED,
REGIONAL OFFICE, ERNAKULAM, P.B.NO.2702,
DHARMODAYAM BUILDING, SHANMUGHAM ROAD,MARINE DRIVE,
ERNAKULAM-682 011.**

2. **MRS. JULA S.NAIR, W/O. K.SASIDHARAN NAIR,
AGED ABOUT 43 YEARS, 239, 9TH CROSS,SREERAMPURA,
2ND STAGE, MYSORE-570023.**

3. **A.M. JOSEPH, S/O. MATHEW,
AGED 68 YEARS, FADUKKU, ETTIYIL HOUSE,
SANKARAMPADY P.O., PIN-671541, KARIVEDAKAM,
KASARGODE.**

4. **MARY JOSEPH, W/O. A.M.JOSEPH,
AGED 65 YEARS, PADUKKU, ETTIYIL HOUSE,
SANKARAMPADY P.O., PIN-671541, KARIVEDAKAM,
KASARGODE.**

5. **UNION OF INDIA,
MINISTRY OF FINANCE, NEW DELHI.**

**BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR forR5
SRI.K.PRABHAKARAN, SC for South Indian Bank for R1**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.31972/2007 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF REGISTERED POWER OF ATTORNEY BY THE PETITIONER IN FAVOUR OF 4TH RESPONDENT DTD. 19/09/2005.**

EXT.P2: **COPY OF LETTER ISSUED BY THE 1ST RESPONDENT BANK TO THE PETITIONER AND RESPONDENT 2 TO 4 DTD. 19/09/2006.**

EXT.P3: **COPY OF LETTER ISSUED BY THE 1ST RESPONDENT BANK TO THE PETITIONER AND RESPONDENT 2 TO 4 DTD. 22/2/2007.**

EXT.P4: **COPY OF LAWYERS REPLY NOTICE ISSUED BY ADV.GEORGE JOHN PLAMOOTTIL TO THE BRANCH MANAGER, 1ST RESPONDENT BANK, IDUKKI BRANCH DTD.19/03/2007.**

EXT.P5: **COPY OF REPLY NOTICE ISSUED BY THE 1ST RESPONDENT BANK TO ADV.GEORGE JOHN PLAMOOTTIL DTD. 27/03/2007.**

EXT.P6: **COPY OF POSSESSION NOTICE DTD. 2/06/2007 BY THE 1ST RESPONDENT.**

EXT.P7: **COPY OF THE CERTIFICATE ALLEGED TO BE GIVEN BY THE PETITIONER DTD. 15/08/2005.**

EXT.P8: **COPY OF ORDER IN I.A.NO.1320/2007 IN S.A.NO.56/2007 OF THE HONOURABLE DEBT RECOVERY TRIBUNAL, ERNAKULAM.**

EXT.P9: **COPY OF NOTICE DTD. 12/10/07 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.**

/TRUE COPY/

P.A.TO JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

ANTONY DOMINIC, J.

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W.P.(C) NO.31972 OF 2007 F
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Dated this the 28th day of November, 2007

J U D G M E N T

The petitioner seeks to quash Ext.P6, an order passed by the Debts Recovery Tribunal rejecting IA 1320/07, in SA No.56/07. By this IA, petitioner sought stay of further proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, which has been declined by the DRT. The case of the petitioner is that his property has been mortgaged to the Bank, based on a fraudulent power of attorney and it is on that basis, that appeal itself has been filed, submits the counsel for the petitioner.

2. Now that a question on the very genuineness of the power of attorney on which mortgage deed has been created is itself is in issue, in my view, Debts Recovery Tribunal should have decided that issue before declining stay that was now sought for by the petitioner.

3. The learned counsel for the bank complains that while on the one hand Debts Recovery Tribunal has declined stay, the

Bank is prevented by the order of this court from proceeding with the sale as proposed. It is submitted that in the process, the Bank is incurring heavy expenses for the security and upkeep of the property. This necessarily is a matter of concern and if the petitioner is holding up the sale at his instance, the petitioner should necessarily bear the expenses incurred by the Bank for this purpose. Therefore, to strike a balance between the parties, I dispose of this writ petition with the following directions.

1) That henceforth, the petitioner shall reimburse the expenditure that is incurred by the Bank for the upkeep and the security provided to mortgaged property. Each month, before 5th, the expenditure incurred by the Bank shall be intimated to the petitioner and the amount shall be reimbursed by the petitioner to the Bank, before 10th thereof.

2) Subject to the above, the interim order of stay granted by this court on 26/10/2007 will continue until the disposal of S.A.No.56/07.

3) It is further directed that the Debts Recovery Tribunal,

Ernakulam, shall dispose of SA 56/07, giving opportunity to both sides to adduce evidence in support of their respective contentions and at any rate orders shall be passed within three months from the date of receipt of a copy of this judgment.

ANTONY DOMINIC, JUDGE

Rp